

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

NEW DELHI BOMBAY

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T.A. No. 63 / 86

DATE OF DECISION 15.10.1987Maganlal Purshottam Patel PetitionerShri C.S.Thakore Advocate for the Petitioner(s)

Versus

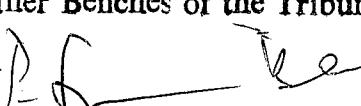
Union of India and others RespondentShri R.K.Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. Srinivasan

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

TRANSFERRED APPLICATION NO.63/86

Maganlal Purshottam Patel
R/at Motilal Nagar I,
Goregaon(W),
Room No.860, Block No.107,
Bombay-62.

Applicant

v/s

Union of India,
Ministry of Railway,
New Delhi.

General Manager,
Central Railway Hqrs,
Bombay V.T.

Divisional Railway Manager (P),
Central Railway, Bombay VT.

Respondents

Coram : Hon'ble Shri P. Srinivasan, Member (A)

Appearances

Shri C.S.Thakore, Advocate
for the applicant

Shri R.K.Shetty, for
the Respondents.

ORAL JUDGMENT

Dated : 15.10.1987

In this transferred application which originated as Short Cause suit No.1693/84 before the City Civil Court at Bombay, the question for determination is whether the respondents viz. the authorities in the Central Railway, were right in retiring the applicant from service on 31.5.1983, on the basis that his date of birth was 1.6.1925 as recorded in his service book.

2. Shri C.S. Thakur, learned counsel for the applicant made the following submissions: The applicant entered service as a temporary cooli on 1.6.1945. At that time his age was recorded in the service card as 20 years. No documentary evidence was produced by the applicant at the time, nor was he medically examined, but somehow the age was noted as 20 years. According

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to Shri Thakore it was only later that the date of birth was recorded on the card as 1.6.1925. The applicant's signature had not been taken on the service card at any time after he entered service except for the thumb impression taken from him in 1945 when initial entries were made. Since the service card was not shown to the applicant and since he had been educated only upto fifth standard, he did not know the date of birth which had been recorded therein. It was only on 29.3.1982 when the Divisional Railway Manager (DRM), Central Railway, brought out seniority lists of officials of various categories that the applicant realised that the year of birth recorded in his service book was 1925. Even in this publication of seniority lists two dates of birth had been given to the applicant viz. 1.2.1925 in the list of Inspectors and 1.6.1925 in the list of Mistrisies, in both of which his name appeared. Thereupon the applicant made a representation to the DRM on 20.7.1982 enclosing a school leaving certificate and contending that his correct date of birth was 10.4.1930 as stated in the said certificate and not either 1.2.1925 or 1.6.1925. This representation was rejected by the DRM by letter dated 24.7.1982. Another representation dated 9/11.8.1982 was also similarly rejected. Finally on 30.5.1983, the DRM wrote to the Electrical Foreman VII Station asking him to ensure that the applicant was stopped from work on 31.5.1983. Shri Thakore highlighted the fact that this letter did not say that the applicant was to superannuate on 31.5.1983 but only that he should be stopped from work beyond that date. Thereafter the applicant sent a notice dated 19.3.1983 under Sec.80 of the Code of Civil Procedure of his intention to take

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legal action but to this also he received no reply.

It is only thereafter that he filed the present application as short cause suit No.1693/84.

3. Drawing attention to Rule 145 of the Indian Railway Establishment Code, Shri Thakore pointed out that in the case of an illiterate employee the date of birth had to be recorded by a senior class III Railway servant and witnessed by another Railway servant. Here in the service card of the applicant the date of birth had been written in blue at the top of the card without showing who wrote it or who certified it. Moreover that entry not being in the same ink as the other entries on the same page was obviously made subsequently. The initial entry made in the presence of the applicant was only to the effect that his age was 20 years and even this was a pure estimate. The date of birth recorded, therefore, was an obvious interpolation and, therefore, should not have been acted upon. No doubt by Board's circular dated 4.8.1972 employees of the Railway were given a one-time opportunity to make representations about their date of birth but wide publicity was not given to the circular and the applicant was not aware of it and so he did not make any representation before the last date indicated therein. Further the respondents should have undertaken a review of the applicant's date of birth in accordance with Board's circular dated 22.3.1972 but that also was not done. The DRM had rejected the applicant's representation made in 1982 without giving him any opportunity of being heard, particularly when the Chief Clerk of the DRM's and the register of births office had verified the date of birth in the school records after visiting the applicant's village. The entry in

P. S. K.

the school leaving certificate which had been produced by the applicant had been made on the basis of the entry in the register of births and deaths. There was a small discrepancy in the name recorded in the register and that recorded in the school. The register of births and deaths referred to "Jaglo" while the school records showed the applicant's name as Magan Lal. To clear this discrepancy the applicant had produced an affidavit by a certain Shri Bhikhubhai Vaghabhai who knew the applicant and his family and on the basis of this affidavit the school authorities had noted the applicant's date of birth as 10.4.1930. All this had been noted by the Chief Clerk of the respondents who was asked to make enquiries. The respondents had declined to give any value to the school leaving certificate and the facts ascertained by the Chief Clerk on enquiry, relying entirely on the entry in the service book which was not supported by any documentary evidence. Shri Thakore, therefore, submitted that the applicant had been wrongly retired on 31.5.1983 and prayed that this Tribunal should direct the respondents to take the applicant back into service and to allow him to retire on 30.4.1988 on the basis that his correct date of birth was 10.4.1930.

4. Shri R.K. Shetty learned counsel for the respondents strenuously opposed the contentions of Shri Thakore. It was not right, he said, to urge that the applicant's came to know of the date of birth recorded in his service book only in 1982. In fact the respondents had brought out a seniority list on 7.7.1975 in which the applicant's date of birth had been noted as 1.6.1925. The cause of action arose on that date and the present application which was filed as a civil suit in 1984 was hit by

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by limitation. The applicant should have filed the suit within three years of the date on which the cause of action arose but he had failed to do so. Shri Shetty contended that the present application was an afterthought and a fraudulent attempt to get the date of birth altered to the advantage of the applicant to enable him to get five more years of service to which he was not entitled. The date of birth recorded on the service ~~card~~ was consistent with the age noted therein, i.e., 20 years and there can be no dispute that the age was written in the presence of the applicant and attested by him by putting his thumb impression. Under Rule 145 of the Railway Establishment Code when a person entering service was unable to give his date of birth he should be assumed to have completed the stated age on the date of attestation. The applicant obviously stated his age as 20 years on 1.6.1945 when he entered service and therefore, his date of birth was recorded as 1.6.1925 and this was in accordance with ~~the~~ Rule 145(2)(b). The entry relating to the applicant's age had been attested by three senior officials of the Railways and the applicant's thumb impression. The age noted therein has to be considered to be the correct age for another reason. If the applicant had been borne in 1930 as claimed by him he would have been only 15 years of age in 1945. Normal age for entry into Government service has to be 18 years; the applicant would have been rejected as under-aged. As against the entry of the age and the date of birth consistent with that entry made in the card, the applicant produced at a very late stage in 1982 what was purported to be a school leaving certificate issued to him. This school leaving certificate was based on a birth certificate ^{issued} ~~was~~ in a different name, viz., "Jaglo." It is common ground that the

P. J. *[Signature]*

school authorities had some difficulty in entering the applicant's date of birth on the basis of the birth certificate, but they eventually did so because of an affidavit sworn by a neighbour of the applicant in his village. That affidavit cannot be accepted as giving the correct state of affairs.

The inconsistency between the name entered in the school register and the name given in the birth register was a factor which the authorities took into account in rejecting the school leaving certificate. The Chief Clerk who make the enquiries had specifically pointed out the discrepancy in the names and even the name of the father had been given in the birth certificate as Purshot Bhana and not as Purushotham Lal Patel. Shri Shetty, therefore, submitted that the birth certificate pertained to some other person and not the applicant and the school leaving certificate which was based on that could not be acted upon by the respondents. The applicant cannot take a double advantage. When he entered service he was appointed on the basis that he was of full age i.e., more than 18 years of age and now by changing the date of birth he wanted the extension of his service by five years. The applicant should be estopped from making this claim now at this late stage.

5. I have considered the rival claims very carefully. The entry of date of birth in the service book and the determination of the date on which a government official is to superannuate are basically administrative functions. At the same time, an employee can ask for an alteration in the date of birth recorded in the service book by producing relevant evidence. The rules provide that

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representations for alteration of date of birth should be made within a reasonable time from the date of entry into Government service. This is to ensure that there is some certainty about entries in service records and that employees do not ask for change from time to time till the date of their retirement. The Railways did, as a special measure, permit their employees to make representations about the date of birth during 1972-73 as a one-time measure. As held by a Bench of this Tribunal, not making a representation during that period is not an insuperable bar and an official can make such representation later provided he can show with reasonable evidence that his date of birth recorded in the service book was incorrect. I am not inclined to reject this application at this stage on the ground of limitation as suggested by learned counsel for the Respondents. Therefore, what remains to be seen is whether the applicant produced satisfactory evidence to the authorities about his date of birth and whether the authorities acted illegally in rejecting the applicant's claim for alteration of his date of birth. Here one must remember that in reviewing an administrative decision, the role of this Tribunal is one of judicial review. It is not for this Tribunal to reappraise the entire evidence to come to a different decision. This Tribunal has only to see whether the authorities concerned acted fairly and on relevant evidence and not arbitrarily. The adequacy of evidence on which they acted cannot be gone into. In the light of these observations what do we find? The applicant produced a school leaving certificate in 1982. He is stated to have left school in 1940. Obviously this certificate would have been with the applicant when he

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entered service in 1945. If so why did he not produce/then? Then there is the question of discrepancy in names. The authorities took the view that this discrepancy in names rendered the school leaving certificate an unreliable document. As Shri Shetty pointed out, the date of birth appearing in the school leaving certificate would mean that the applicant was only 15 years of age in 1945 and if so in all probability he may not have been given the appointment at all. In the background of these facts I cannot say that the authorities were unreasonable or acted in an arbitrary manner when they rejected the evidence of the school leaving certificate or of the birth certificate. As I have said earlier I am not laying stress on the fact that the application for change of date of birth was made at a late stage. Therefore, it is not necessary to refer to the decisions showing that the belated applications can be accepted. In my opinion the authorities did not act in an arbitrary manner when they decided that the evidence produced by the applicant was not reliable and as a result the applicant could not be given the benefit of the date of birth which he claimed on the basis of the said certificate. In view of this I have no alternative but to reject the claim of the applicant.

6. In the result the application is dismissed.

Parties to bear their own costs.



(P. SRINIVASAN)
Member (A)